IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.1 of 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mrs.P.C.Kansara, for the Petitioner
Mr. Y.J. Master for Respondent No.1.
Mr. Prakash Mahadik, for Respondent NO.6.
Mr. A.H. Palekar, AGP for Respondent Nos. 2 to 4.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 14, 2005

P.C.

. Rule. Heard forthwith. The petitioner impugns the order dated 3rd December, 2004. By that order the Civil Judge, Junior Division, Daund, District Pune, has set aside the election of the petitioner herein on the ground that in the electoral roll the name as shown is of Bandu Govind Shinde and not Bandu Eknath Shinde. In view of the order to be passed it is not necessary to go into the various controversy on the findings recorded by the Court. The learned Judge in the impugned order in paragraph 15 has relied on various documents which were produced at the instance of the petitioner herein. The grievance of the election petitioner. The respondent NO.1 herein is that those documents were produced after the evidence had been closed and inspite of objections

raised by Respondent No.1 the Respondent No.1 had no means to challenge the authenticity of the said documents. It is submitted that an opportunity should have been given to the petitioner to challenge the authenticity of the said documents. As that was not done there has been failure to comply with the requirement of law and on this ground alone the impugned order is liable to be set aside.

2. In the impugned order the learned Judge has been pleased to record a finding that the petitioner herein has sometime used his name as Bandu Govind Shinde and sometime as Shinde Bandu Eknath. The only issue is whether the documents set out in paragraph 15 could have been relied upon without giving an opportunity to the respondent No.1 or the other contesting respondents. In my opinion the documentary evidence unless admitted by the Respondents had to be proved in the course of evidence. That has not been done. That being the case even if some of the documents were produced an opportunity had to be given to the contesting respondents. That having not been given the impugned order on that count is liable to be set aside.

3. In the light of that Rule made absolute in terms of prayer clause (b). The matter is remanded back to the learned trial Judge. The petitioner, if so advised, if he wants to rely upon the documents listed in paragraph 15 he will have to produce them in the course of examination. The trial Court having allowed the documents to permit the petitioner to lead evidence. The contesting respondents will be allowed to cross examine the petitioner and also lead evidence if they so desire on that aspect of the matter. The trial Court thereafter to pass appropriate orders according to law.

4. Considering that the impugned order is set aside the election programme not to be proceeded with.

(F.I. REBELLO, J.)